

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JANICE E. JONES)	
Claimant)	
VS.)	
)	Docket No. 214,204
THE BOEING COMPANY)	
Respondent)	
AND)	
)	
KEMPER NATIONAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on June 19, 1997.

ISSUES

The sole issue on appeal is whether the Administrative Law Judge exceeded her jurisdiction by granting benefits when, according to respondent, claimant did not give notice as required by K.S.A. 44-520.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the evidence, the Appeals Board concludes claimant did not give notice as required and the Order granting benefits should be reversed.

The evidence establishes that claimant sustained an injury at work on April 23, 1996. Claimant experienced a sudden onset of low back pain on that date as she twisted after reaching up to get a tool on a top shelf. She missed work the following day

and missed work for a total of approximately nine days over the next two months because of the symptoms from this injury. Claimant did not report an injury until June 12, 1996.

Claimant alleges that the injury occurred initially on April 23, 1996, and continued thereafter through June 12, 1996. However, the record reflects a single date of onset and does not support a conclusion that there was continuing aggravation thereafter.

Claimant also contends there was just cause for not giving notice within ten days. Claimant had prior kidney problems which, when she finally did seek medical attention, were ruled out as the cause of her symptoms in this case. The Board finds this fact does not establish just cause. First, claimant testified she really did not think it was her kidneys. In addition, as respondent points out, claimant clearly knew that the incident at work had precipitated the onset of symptoms. Even if it were an injury to her kidneys, notice should have been given.

Claimant also testified that she thought she might have simply pulled a muscle and that it would go away. She testified that she would do that occasionally and then it would go away after about a week or so. The Board is, nevertheless, persuaded that claimant did not have just cause for failing to give notice. The Board so finds in large part because of the apparent continuing severity of the symptoms as reflected by the amount of time she missed from work.

WHEREFORE, the Appeals Board finds that the Order by Administrative Law Judge Nelsonna Potts Barnes should be, and the same is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of August 1997.

BOARD MEMBER

c: Chris A. Clements, Wichita, KS
Eric K. Kuhn, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director